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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SICRE, YEPIZ, CELAYA Y ASOCIADOS S.C.

Plaintiff,

vs.

YOUTUBE, INC., YOUTUBE, LLC, RAUL
JIMENEZ, AND JOSE MORALES

Defendants.

CASE NO. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
DAMAGES**

DEMAND FOR JURY TRIAL

Date Filed:

Trial Date: TBD

Plaintiff, Sicre, Yepiz, Celaya y Asociados S.C. ("Plaintiff") by and for their Complaint against Defendants YouTube, Inc. and YouTube, LLC (collectively, "YouTube," which also refers to the YouTube.com website), Raul Jimenez ("Jimenez"), and Jose Morales ("Morales") (all collectively, "Defendants"), aver as follows:

NATURE OF ACTION

1. Plaintiff brings this action to stop the willful copyright infringement of Defendant YouTube, Jimenez, and Morales. Defendants are profiting from the unlawful reproduction

1 and distribution of “Spot del Presidente Enrique Peña Nieto Primer Informe de Gobierno”
 2 (“Plaintiff’s work”) without license from Plaintiff.

3 2. Since its founding in February 2005, YouTube has become one of the most popular
 4 websites for viewing, uploading, and sharing video clips.

5 3. YouTube’s popularity is in no doubt largely based on the large amounts of misappropriated
 6 copyrighted material that pervades the site.

7 4. YouTube permits, encourages, and enables users to view, upload, and share copyrighted
 8 materials because such copyrighted materials increase YouTube site traffic, leading to revenue.

9 5. YouTube directly profits from the unlawful uploading, viewing, and sharing of copyrighted
 10 materials, including the uploading Plaintiff’s work by Jimenez, and Morales, on the YouTube
 11 website.

12 6. YouTube has allowed the unlawful uploading (by Jimenez, and Morales), viewing, and
 13 sharing of Plaintiff’s work on the YouTube website.

14 7. Defendants’ willful conduct has caused irreparable harm to Plaintiff, and without judicial
 15 intervention, Plaintiff will continue to suffer irreparable harm by Defendants.

16 8. For the foregoing reasons, and the reasons set forth below, Plaintiff seeks injunctive and
 17 other equitable relief and damages.

18 **JURISDICTION AND VENUE**

19
 20 9. This Court has subject matter jurisdiction over this action, which arises under the Copyright
 21 Act, 17 U.S.C. § 101 *et seq.*, pursuant to 28 U.S.C. §§ 1331 and 1338(a).

22 10. This Court has personal jurisdiction over YouTube because YouTube’s principal place of
 23 business is located in this Judicial District.

24 11. This Court has personal jurisdiction over Jimenez, and Morales because Jimenez and
 25 Morales have consented, in their counter-notifications, to the jurisdiction of the Federal District
 26 Court where YouTube is located.

12. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(a) because YouTube's principal place of business is located in this Judicial District.

THE PARTIES

13. Plaintiff, Sicre, Yepiz, Celaya y Asociados S.C. is a Mexican Civil Company (Sociedad Civil) with its principal place of business at Tamaulipas No. 144a, Hermosillo, Sonora, Mexico.

14. Sicre, Yepiz, Celaya y Asociados is authorized to defend the copyright against the unauthorized use of materials registered under the name Estudios Churubusco Azteca, S.A. ("Estudios Churubusco").

15. Defendant YouTube, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 1000 Cherry Avenue, San Bruno, California and in this Judicial District.

16. Defendant YouTube, LLC is a limited liability company organized and existing under the laws of the State of Delaware and with its principal place of business at 1000 Cherry Avenue, San Bruno, California and in this Judicial District.

17. Raul Jimenez is a citizen of Mexico, whose stated address is Bolivia 2374, Guadalajara, Jalisco 44920.

18. Jose Morales is a citizen of the United States, whose stated address is 15416 Park Point #102, Lake Elsinore, California, 92532.

FACTUAL ALLEGATIONS

19. YouTube is a popular website that allows its users to upload videos, music, sounds, and other materials, all of which can then be viewed or shared by its users. Since being founded in February 2005, YouTube has reached incredible popularity, with over 2 billion views a day. While the site is free to access and upload content, YouTube generates revenue through such streams as the placement of advertisements on top of videos being displayed and the running advertisements before the users' desired video is displayed.

20. YouTube is widely used for the purpose of viewing and sharing commercial content, including music, music videos, concerts, sporting events, television programs, movies, artistic works, and other content.

21. The copyright for Plaintiff's work is registered under the laws of Mexico and listed in the Public Registry of Author's Rights (Registro Público del Derecho del Autor) in the name of Producciones Rodriguez Hermanos.

22. Plaintiff will apply for a copyright in the United States for Plaintiff's work.

23. Plaintiff is authorized to defend the copyright against the unauthorized use of materials registered under the name Roberto Hernandez Paniagua.

24. A copy of Plaintiff's work was uploaded to YouTube by Jimenez, under the username "Mexico Conciencial" and by Morales, under the username "RedNoticiero."

25. Estudios Churubusco was made aware of the upload of Plaintiff's work.

26. Thereafter, Estudios Churubusco filed a complaint with Defendants in accordance with the United States Digital Millennium Copyright Act ("DMCA") § 17 U.S.C. 512 on January 15, 2014.

27. Based on the DMCA Notice, Defendant YouTube removed Plaintiff's work from the YouTube website.

28. On January 16, 2014, both Jimenez and Morales filed a counter-notification.

29. Defendants subsequently re-inserted Plaintiff's work on its YouTube site.

30. Defendants' acts have caused substantial and irreparable harm to Plaintiff. Defendants' acts have caused Plaintiff to (1) lose the ability to control the delivery, manner, and means by which its work is disseminated to the public; and (2) directly and indirectly lose revenue as a result of unauthorized views on YouTube replacing sales through authorized channels.

31. Defendants' acts are causing irreparable injury to Plaintiff that cannot be fully compensated or measured in money damages and will continue unless enjoined by this Court.

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FIRST CLAIM FOR RELIEF
(Direct Copyright Infringement—Against All Defendants)

32. Sicre, Yepiz, Celaya y Asociados realleges and incorporates by reference the allegations contained in paragraphs 1 through 31 above.

33. Defendants' enumerated conduct is a direct copyright infringement of the Protected Work.

34. The foregoing acts of infringement by Defendants are willful, intentional, and purposeful and in disregard and of indifference to the rights of Plaintiff.

35. The foregoing acts constitute direct infringement of the exclusive rights in Plaintiff's work.

SECOND CLAIM FOR RELIEF
(Contributory Copyright Infringement—Against Defendant YouTube)

36. Sicre, Yepiz, Celaya y Asociados realleges and incorporates by reference the allegations contained in paragraphs 1 through 35 above.

37. YouTube has substantially contributed to the copyright infringement of Plaintiff's work by providing the site, means, and facilities for the copyright infringement of Plaintiff's work that has resulted from an unauthorized copy of Plaintiff's work being uploaded to YouTube, images from Plaintiff's work being displayed on YouTube, and every time a user views, shares, copies, or otherwise transmits such work. YouTube encourages, makes possible, and facilitates each infringement.

38. YouTube has actual and constructive knowledge of the infringing activities alleged herein.

39. The foregoing acts of infringement by YouTube are willful, intentional, purposeful, in disregard, and of indifference to the rights of Plaintiff.

40. YouTube's acts and conduct, as alleged above in this Complaint, constitute contributory copyright infringement.

THIRD CLAIM FOR RELIEF
(Vicarious Copyright Infringement—Against Defendant YouTube)

41. Sicre, Yepiz, Celaya y Asociados realleges and incorporates by reference the allegations contained in paragraphs 1 through 40 above.

1 42. YouTube has the right and ability to control the infringing activities of the individuals or
2 entities that directly infringed Plaintiff's work.

3 43. YouTube has received direct financial and related benefits from the infringing activities of
4 the individuals or entities that directly infringe Plaintiff's work.

5 44. The foregoing acts of infringement by YouTube are willful, intentional, purposeful, in
6 disregard, and of indifference to the rights of Plaintiff.

7 45. YouTube's acts and conduct, as alleged above in this Complaint, constitute vicarious
8 infringement of the exclusive rights in Plaintiff's work.

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10 **FOURTH CLAIM FOR RELIEF**
(Inducing Copyright Infringement—Against Defendant YouTube)

11 46. Sicre, Yepiz, Celaya y Asociados realleges and incorporates by reference the allegations
12 contained in paragraphs 1 through 45 above.

13 47. YouTube has infringed Plaintiff's work by inducing others to copy, adapt, distribute,
14 perform, publicly display, and transmit Plaintiff's work.

15 48. YouTube provides access to their site with the object of promoting its use to infringe
16 copyright.

17 49. The foregoing acts of infringement by YouTube are willful, intentional, purposeful, in
18 disregard, and of indifference to the rights of Plaintiff.

19 50. YouTube's acts and conduct, as alleged above in this Complaint, constitute inducing
20 copyright infringement of Plaintiff's work.

21
22 **PRAYER**

23 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

24 1. That this Court award Plaintiff injunctive and other equitable relief, in accordance with
25 the provisions of Rule 65 of the Federal Rules of Civil Procedure, enjoining Defendants, their
26 officers, agents, servants, employees and attorneys, and all those in participation with them or any
27 of them who receive actual notice of the Court's injunctive order:
28

1 A. From directly or indirectly reproducing, adapting, distributing, publicly
2 displaying or performing, or otherwise infringing in any manner, any of the Protected Works,
3 including but not limited to the works identified herein;

4 B. From causing, contributing to, inducing, enabling, facilitating, or participating in
5 the infringement of the works identified herein;

6 C. Awarding such other equitable relief as will protect Plaintiff's rights to its
7 copyrighted content and any exclusive rights in sound recordings protected by state law, including
8 imposing a constructive trust on all the assets of Defendants, if necessary, to secure to Plaintiffs the
9 benefits that the Constitution and Congress have promised them;

10 2. For a declaration that Defendants' YouTube service willfully infringes Plaintiff's
11 copyrights both directly and secondarily;

12 3. For statutory damages pursuant to 17 U.S.C. § 504(c). Alternatively, at Plaintiff's
13 election, pursuant to 17 U.S.C. § 504(b), for actual damages plus Defendants' profits from
14 infringement, as will be proven at trial;

15 4. For Plaintiff's costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505;

16 5. That this Court find Defendants jointly and severally liable for all damages awarded;

17 6. For pre- and post-judgment interest according to law; and

18 7. For such other and further relief as this Court may deem just and proper.

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20 DATED: January 27, 2014

Respectfully submitted,
MICLEAN GLEASON LLP

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22
23 By /s/ Anne-Marie D. Dao

24 Anne-Marie D. Dao
25 Gary R. Gleason
Attorneys for Plaintiff Sicre, Yepiz, Celaya y
26 Asociados S.C.
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